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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,175	01/14/2004	Thomas M. Walraven	LTTPK0116US	4188

7590 03/30/2006

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EXAMINER

FRANCIS, FAYE

ART UNIT	PAPER NUMBER
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3725

DATE MAILED: 03/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/757,175	Applicant(s) WALRAVEN, THOMAS M.	
	Examiner Faye Francis	Art Unit 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-10, 15, 19 and 24 is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 11-14, 16-18, 20-23 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Allowability of claims 16-18 and 20 are hereby withdrawn. An action on the merits of the claims follows.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 is indefinite because it is not clear what the phrase "any spacing" is intended to encompass.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

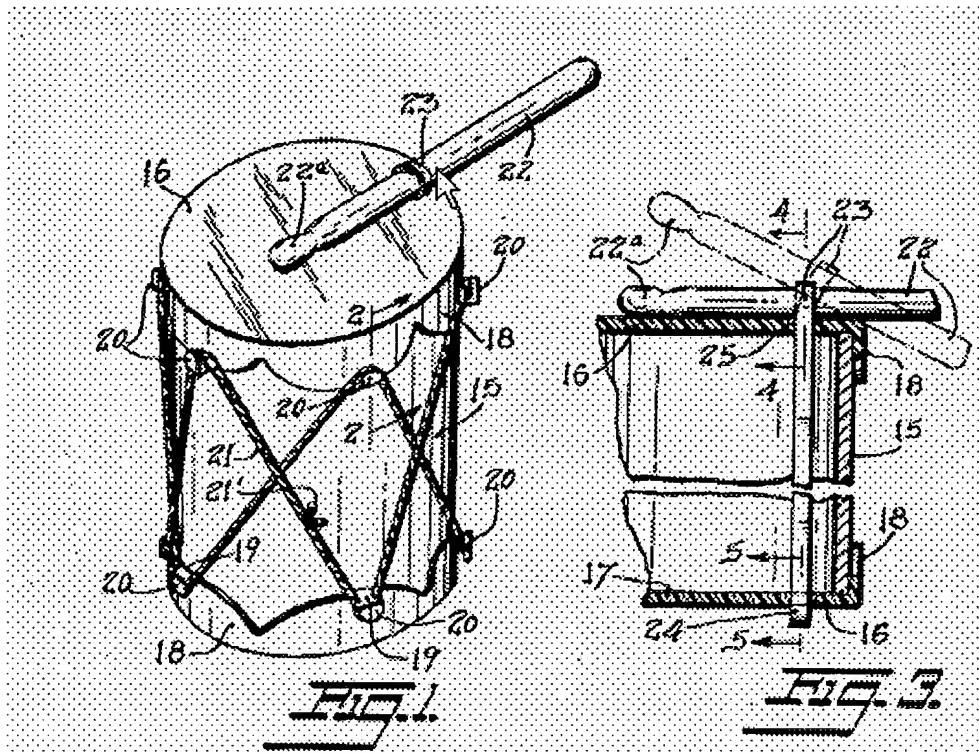
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3-4, 11, 18 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Lebensfeld et al. [2,620,703], hereinafter Lebensfeld.

Lebensfeld discloses in Figs 1-9 (also see Figure below wherein the letter A-E have been added by the examiner), a toy percussion instrument, comprising: an instrument body 15, a striker/ implement [drumstick 22] for striking the instrument body to produce a sound; and a tether [resilient member 23] connecting the striker/

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implement to the instrument body; wherein the tether has one end connected to the instrument body at a body attachment location A, an opposite end connected to the striker/ implement at a striker/ implement attachment location B, and an intermediate portion C extending loosely ["not rigidly fastened" according to Merriam-Webster's Collegiate Dictionary Tenth Edition] between the ends of the tether, the striker/ implement attachment location being fixed in relation to and spaced inwardly from the ends of the striker by at least one fifth the length of the striker/ implement as recited in claim 1. Additionally, Lebensfeld discloses the striker/ implement attachment location is spaced inwardly from the ends of the striker/ implement by at least one fourth the length of the striker as recited in claim 3, the striker/ implement attachment location being fixed in relation to and spaced inwardly from the striker end of the striker/ implement by a distance D **about** equal the distance E between the body attachment location and a center of the drumming surface [in the absent of any definition in the specification and in so far as the applicant has claimed, the distance C is considered to be **about** equal to the distance D] as recited in claims 11, 22. Also, Lebensfeld discloses the striker/ implement attachment location is spaced inwardly from the ends of the striker implement by at least one fifth the length of the stricker/implement as recited in claim 21.

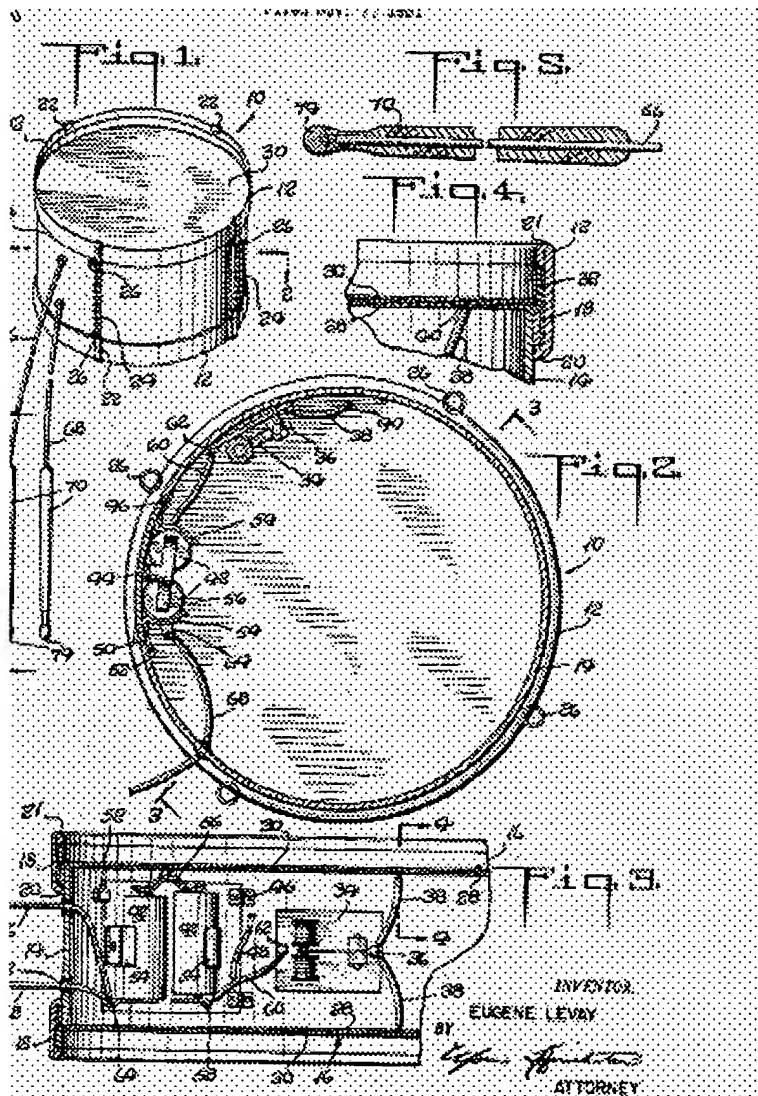


6. Claims 23 and 25 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Levay [2,655,071].

Levay discloses in Figs 1-5 (also see Figure below wherein the letter A-C have been added by the examiner), a toy percussion instrument [drum 10], comprising: an instrument body 14, two striker/ implement [drumstick 70] for striking the instrument body to produce a sound; and two tethers [wires 66 and 68] connecting the strikers/ implements to the instrument body; wherein each tether has one end connected to the instrument body at a body attachment location A, and an opposite end connected to the respective striker/ implement at a striker/ implement attachment location B from which the tether extends away from the respective striker [each tether extends from the attachment location A through the respective striker and extends away from the respective striker at point C. Note the applicant drawing wherein the tether extends from

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the attachment location on one side through the striker and extends away from the respective striker at the other side], the striker/ implement attachment location being spaced inwardly from the ends of the respective striker.



Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lebensfeld as applied to claims 1, 3-4, 11, 18 and 21-22 above and further in view of Pollock [D489,398].

Lebensfeld discloses most of the elements of these claims as stated above but for the instrument body has a shape of a turtle.

Pollock teaches that it is conventional to make a drum in a shape of a turtle. It would have been obvious to one of ordinary skill in the art at the time the invention was made, in view of Pollock to make the device of Lebensfeld in a shape of a turtle to make the device more enjoyable for the children to play with. With respect to the "drumming surface" any part of the drum including its shell is considered to be a drumming surface since it inherently can be hit to produce a sound.

Allowable Subject Matter

9. Claims 5-10, 15, 19 and 24 are allowed.

10. Claims 12-14 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Arguments

11. Applicant's arguments filed 1/1/06 have been fully considered but they are not persuasive.

In response to applicant's argument on pages 9 and 10 regarding the rejections of claims 1, 3-4, 11, 21, 22 and 25 please see the rejection as stated in the above paragraphs.

In response to applicant's argument regarding claim 12, although the applicant has argued, the applicant has not provided any support for the broad claim limitation in the specification and by support the examiner means that the applicant does not provide meets and bonds of the claim limitation.

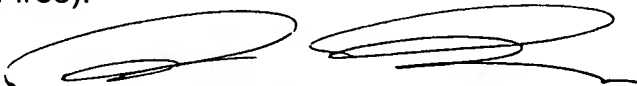
Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 571-272-4423. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FF



Faye Francis
Primary Examiner
Art Unit 3725